IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 708 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAYBHAI PATABHAI BHARWAD

Versus

SUB DIVISIONAL MAGISTRATE AND OR HIS SUCCESSOR IN OFFICE

Appearance:

1. Special Criminal Application No. 708 of 2001

MR RR DEVAL FOR MR BHARGAV N BHATT for Petitioner

MR KT DAVE APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 05/10/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated January 1, 2001 Annexure A to the petition, passed by the Sub Divisional Magistrate, Bhavnagar, by which he has externed the petitioner for a period of two years from

six districts, i.e., Bhavnagar, Surendranagar, Rajkot, Amreli, Junagadh and Ahmedabad and also the order dated July 26, 2001, Annexure B to the petition, passed by the appellate authority, confirming the order of externment passed by the externing authority, and prayed to quash and set aside both the above mentioned orders.

2. A show cause notice dated November 23, 2000, Annexure C to the petition, under Section 59 of the Bombay Police Act ('the Act' for short) was issued to the petitioner in which several allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and gives threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him are detrimental to the maintenance of public order. Besides this, ten cases for the commission of offences under the Indian Penal Code are also registered against him at various police stations of Bhavnagar District. Therefore by the show cause notice, the petitioner was called upon to show cause as to why he should not be externed from the above mentioned six districts.

3. The petitioner gave reply to the show cause notice on December 20, 2000, Annexure D to the petition.

4. The externing authority, after considering the reply submitted by the petitioner and other material on record, passed the impugned order of externment by exercising powers under section 56 (b) of the Act externing the petitioner for a period of two years from the above mentioned six districts.

5. Being aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal and the appellate authority by order dated July 26, 2001 dismissed the appeal filed by the petitioner which has given rise to the present petition.

6. Mr. Deval, learned advocate for the petitioner has raised several contentions and tried to convince the Court that the order of externment suffers from various vices much less it is passed in clear non-application of mind. Besides this, he has also raised the contention that the petitioner belongs to Bhavnagar District and he is externed not only from Bhavnagar District but from other five districts also. He also contended that the alleged so-called activities which are narrated in the

show cause notice are confined to Bhavnagar District only and the externing authority has not mentioned anything about the activities of the petitioner in the contiguous five districts. Therefore, according to the learned advocate for the petitioner, the impugned order of externment suffers from the vices of non-application of mind and is liable to be quashed and set aside.

7. Mr. K.T. Dave, learned APP who appears for the respondents has made oral submissions. However, he does not dispute the factual aspect that the externing authority has not assigned any reason for externing the petitioner from five other contiguous districts besides Bhavnagar District. Therefore, he urged to pass appropriate orders in the facts and circumstances of the case.

8. I have considered the submissions advanced by the learned advocates for the parties. I have also considered the averments made in the petition, documents annexed with the petition and the impugned orders.

9. It is true that the externing authority has power under section 56 of the Act to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the district contiguous to his own district. The criteria for passing such an order is provided for in Section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order.

10. Coming to the facts of the present case, there is no manner of doubt that the externing authority has not mentioned either in the show cause notice or in the impugned order of externment as to what necessitated him to pass the order of externment of the petitioner from the above mentioned five districts in addition to Bhavnagar District. Therefore, it can be said that at the time of passing of the impugned order of externment, the externing authority has not mentioned as to why the petitioner should be externed from other five districts also in addition to Bhavnagar District. On this sole ground the orders passed by the externing authority externing the petitioner and that of the appellate authority confirming the order of externment both are

rendered invalid and illegal and deserve to be quashed and set aside.

11. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned order of externment passed by the externing authority and the order passed by the appellate authority confirming the externment order, both are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

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